

The opinion in support of the decision being entered
today is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KAUSHAL KURAPATI and
JACQUELYN ANNETTE MARTINO

Appeal 2007-1294
Application 09/408,794¹
Technology Center 2100

Decided: September 26, 2007

Before: JOSEPH F. RUGGIERO, JAY P. LUCAS and JOHN A. JEFFERY,
Administrative Patent Judges.

LUCAS, *Administrative Patent Judge.*

DECISION ON APPEAL
STATEMENT OF CASE

Appellants appeal from a final rejection of claims 1 to 21 under
authority of 35 U.S.C. § 134. The Board of Patent Appeals and
Interferences (BPAI) has jurisdiction under 35 U.S.C. § 6(b).

¹ Application filed September 30, 1999. The real party in interest is
Koninklike Philips Electronics, Eindhoven, Netherlands.

Appellants' invention relates to a method, apparatus, and computer program for better searching multiple information sources, including the Internet, using a user profile, and virtual library. In the words of the Appellants:

One embodiment of the present invention is a method of realizing personalized information for a user from multiple information sources, comprising establishing a user profile for the user based on various interests of the user; establishing a virtual unified space; populating the virtual unified space with a plurality of different virtual media collections in accordance with the user profile; and browsing the unified space under user control.

(Specification 2-3).

Claim 1 is exemplary of the method claims. The apparatus and computer program claims have similar limitations, adapted for their respective statutory classes:

1. A method of realizing personalized information for a user from multiple information sources, comprising:
 - establishing a user profile for the user based on various interests of the user;
 - establishing a virtual unified space including a virtual library;
 - populating the virtual library with a plurality of different virtual media collections in accordance with the user profile; and
 - browsing the virtual library by moving between the plurality of different media collections under user control.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Rapaport

US 5,890,152

Mar. 30, 1999

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Rejections:

Claims 1 to 21 stand rejected under 35 U.S.C. 103(a) for being obvious over Rapaport.

Grouping:

Group I: Claims 1 to 14 stand or fall together. (Br. 5).

Group II: Claims 15 to 18 stand or fall together. (Br. 5).

Group III: Claims 19-21 stand or fall together. (Br.5).

Appellants contend that the claimed subject matter is rendered obvious by Rapaport for failure of the reference to teach important claimed features of the invention. The Examiner contends that each of the three groups of claims is properly rejected.

Rather than repeat the arguments of Appellants or the Examiner, we make reference to the Brief and the Answer for their respective details. Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not to make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2004).²

We affirm the rejections.

² Appellants have not presented any substantive arguments directed separately to the patentability of the dependent claims or related claims in each group, except as will be noted in this opinion. In the absence of a separate argument with respect to those claims, they stand or fall with the representative independent claim. *See In re Young*, 927 F.2d 588, 590, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991).

ISSUE

The issue is whether Appellants have shown that the Examiner erred in rejecting the claims under 35 U.S.C. § 103(a). The issue turns on whether there are sufficient teachings in the Rapaport reference to render the claims obvious over prior art.

FINDINGS OF FACT

Findings with respect to the rejection of claims in Groups 1 to 3.

1. Appellants' invention relates to an improved browser (meta-browser) which brings into a single conceptual browsing space information from multiple sources of different media types. (Specification 5+). The metaphor for the user is a virtual library with multiple floors, each with a different type of data (books, movies, and music, etc.). (Fig. 1; Brief 5:20+). The invention allows the user to thread "a single search across many different media types and sources which the meta-browser performs automatically for a particular user based on the user's profile." (Specification 7:9+). The collection of data of different types creates a virtual library. (Specification 11:10+). The system is designed to run on computers and other devices with sufficient intelligence to run the program. (Specification 12:9+). The user's profile develops over time, learning what type of information to offer the user. (Specification 16:23+).
2. The Examiner has cited the patent to Rapaport, which teaches a "Personal Feedback browser" for obtaining media files from the Internet. (Abstract). This browser is designed to bring to the

user not only text data, but sound and video files as well. (Col 1, l. 48). The selection of media files is gathered according to the user's Personal Profile. (Col 3, l. 22). The Profile is automatically adjusted over time, based on the user's absorption of the media files presented. (*Id.*). The results of searches for media files are presented in a unified screen such as that illustrated in Figure 15a. In that figure, files of text, audio, and video are presented for user browsing, rated in accordance with various aspects of the user's Personal Profile. (Boxes 1505, 1506, etc.).

PRINCIPLES OF LAW

On appeal, Appellants bear the burden of showing that the Examiner has not established a legally sufficient basis for the rejection of the claims.

"In reviewing the [E]xaminer's decision on appeal, the Board must necessarily weigh all of the evidence and argument." *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

"To reject claims in an application under section 103, an examiner must show an unrebutted *prima facie* case of obviousness. ... On appeal to the Board, an applicant can overcome a rejection by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness." [citations removed] *In re Rouffet*, 149 F.3d 1350, 1355, 47 USPQ2d 1453, 1455 (Fed. Cir. 1998).

Both anticipation under 35 U.S.C. § 102 and obviousness under § 103 are two-step inquiries, in which the first step is a proper construction of the

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claims and the second step requires a comparison of the properly construed claim to the prior art. *Medichem S.A. v. Rolabo S.L.*, 353 F.3d 928, 933, 69 USPQ2d 1283, 1286 (Fed. Cir. 2003).

Our reviewing court states in *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) that “claims must be interpreted as broadly as their terms reasonably allow.” Our reviewing court further states that “the words of a claim are generally given their ordinary and customary meaning.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312, 75 USPQ2d 1321, 1326 (Fed. Cir. 2005) (en banc) (citations omitted). The “ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application.” *Id.* 415 F.3d at 1313, 75 USPQ2d at 1326.

“Shortly after the creation of this court, Judge Rich wrote that ‘[t]he descriptive part of the specification aids in ascertaining the scope and meaning of the claims inasmuch as the words of the claims must be based on the description. The specification is, thus, the primary basis for construing the claims.’ *Standard Oil Co. v. Am. Cyanamid Co.*, 774 F.2d 448, 452, [227 USPQ 293, 295-96,] (Fed. Cir. 1985). On numerous occasions since then, we have reaffirmed that point...” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1315, 75 USPQ2d 1321, 1328 (Fed. Cir. 2005).

ANALYSIS

Appellants contend that Examiner erred in rejecting claims 1 to 21 under 35 U.S.C. 103(a). Reviewing the findings of facts cited above, and

the documents of record, we find that the Examiner has presented a prima facie case for rendering the claims obvious over Rapaport. (Answer 3 - 9).

In response, Appellants have raised a number of arguments indicating potential defects in the teachings of the Rapaport reference. (*See In re Rouffet*, cited above.)

Appellants allege that “Rapaport, as admitted in the Final Office Action, is silent with regard to a virtual library, and fails, of course, to disclose that the library may be browsed by moving between different media collections.” (Br. 6, top). This argument is key to the Appellants’ objection to the rejection, and is best analyzed by considering Claim 1’s limitations, read in the context of the specification.

As noted in Findings of Fact 2, above, Rapaport teaches an enhanced browser designed to acquire information from various information sources spread across the Internet. We find in Rapaport a teaching of the claimed user profile based on the user’s interests. (Col 3, l. 5 *ff*). We also find in Rapaport a virtual unified space: Figure 15a of Rapaport shows a Search Results screen that brings together in a single view the results of searching for butterflies in various contexts and from various information sources, which the Examiner has considered a unified space. We do not find error in that reading.

Is the claimed virtual library also taught? We must consider what is a virtual library. In accordance with *Philips* (cited above) we look first to the common meaning of the term, in light of the specification. We have not found that Appellants rely on an exact definition of virtual library in the specification. We have found the term used in the specification to refer to a metaphor for a physical library, with stacks of information sources listed on various floors of a virtual building. (Specification, Figure 1, and page 11,

line 10 *ff*). This metaphor is not claimed, however, and only the general term virtual library is recited as a limitation in the claim. We are thus free to interpret the term with the reasonable breadth used during examination. The claim only requires that the virtual library is populated with a plurality of different virtual media collections. The Examiner has pointed out (with regard to the discussion of Claim 6, on page 5 of the Answer) that Figure 15a of Rapaport presents, as part of the unified screen (space), a plurality of different virtual media collections – for text, for audio sources, for video sources. We find this a sufficient teaching of a virtual library as claimed, as the claimed steps (claim 1), structure (claim 15), and means (claim 19) are clearly taught by Rapaport.

Appellants further argue that Rapaport does not update the user profile based on the search results. Though we indeed do find such a teaching in Rapaport, in Column 3, line 25, we also note that such an argued limitation is not in the representative claim.

As we find the claims obvious over the teachings of Rapaport, we do not find error in the Examiner's rejection.

CONCLUSION OF LAW

Based on the findings of facts and analysis above, we conclude that the Examiner has not erred in rejecting claims 1 to 21.

DECISION

The Examiner's rejection of claims 1 to 21 is Affirmed.

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AFFIRMED

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